

**Dlubak Corporation and Aluminum, Brick and
Glass Workers International Union, AFL-
CIO-CLC. Case 6-CA-24851**

December 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On September 29 and October 26, 1992, the General Counsel of the National Labor Relations Board issued a complaint and an amended complaint, respectively, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-10106. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed answers to the complaint and the amended complaint admitting in part and denying in part the allegations.

On November 23, 1992, the General Counsel filed a Motion for Partial Summary Judgment.¹ On November 24, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed an answer and statement in opposition to Motion for Summary Judgment.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

In its answer, the Respondent admits its refusal to bargain and to furnish information that is relevant and necessary to the Union's role as bargaining representative but attacks the validity of the certification on the basis of the disposition of challenged ballots.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

¹ The General Counsel does not seek summary judgment with respect to certain allegations of the amended complaint. Rather, summary judgment is sought only as to those portions of the amended complaint which relate to Respondent's refusal to honor the certification in Case 6-RC-10106. Accordingly, the allegations on which the General Counsel does not seek summary judgment, including the allegations concerning the Union's information request are remanded to the Regional Director for further processing.

Accordingly, we grant the Motion for Partial Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Freeport, Pennsylvania,² has been engaged in the manufacture and nonretail sale of glass and aluminum building products. During the 12-month period ending August 31, 1992, the Respondent, in conducting its business operations, purchased and received at its Pennsylvania facilities goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held January 12, 1989,³ the Union was certified on August 31, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Freeport, Pennsylvania, and Kittanning, Pennsylvania, facilities; excluding casual employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

² In its answer to the complaint, the Respondent admits that its place of business is in Freeport, Pennsylvania, rather than Kittanning, Pennsylvania.

³ On January 19, 1989, the Union and the Respondent filed objections to conduct affecting the results of the election. After an investigation, the Regional Director issued an order directing hearing on objections and challenged ballots and notice of further consolidating cases which consolidated for hearing before an administrative law judge, Case 6-RC-10106 with unfair labor practice Cases 6-CA-21319, 6-CA-21538, and 6-CA-21570. A hearing was held and a decision issued by the judge concerning the unfair labor practice and representation issues on September 25, 1991. The judge found multiple and varied 8(a)(1), (3), and (5) violations and recommended the issuance of a bargaining order to remedy these unfair labor practices. With respect to the representation proceeding, the judge overruled one challenged ballot and recommended that the ballot be opened and counted. In addition, he sustained the challenged ballots to the remaining seven. On July 6, 1992, the Board issued a Decision, Order, and Direction, 307 NLRB No. 179, affirming the judge's decision, directing the Regional Director to count the one challenged ballot, to issue a revised tally of ballots, and to issue a certification of representative if a majority of the valid ballots were cast for the Union. If the Union did not receive a majority, the Regional Director was directed to set aside the election and dismiss the representation case. On August 31 and September 9, 1992, respectively, a certification of representative and corrected certification issued certifying the Union.

B. Refusal to Bargain

Since September 1, 1992, the Union has requested the Respondent to bargain and, since September 11, 1992, by letter, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 11, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Dlubak Corporation, Freeport, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Aluminum, Brick and Glass Workers International Union, AFL-CIO-CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees employed by the Em-

ployer at its Freeport, Pennsylvania, and Kittanning, Pennsylvania, facilities; excluding casual employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Post at its facilities in Freeport, and Kittanning, Pennsylvania, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Aluminum, Brick and Glass Workers International Union, AFL-CIO-CLC, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time production and maintenance employees employed at our Freeport, Pennsylvania, and Kittanning, Pennsylvania, facilities; excluding casual employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

DLUBAK CORPORATION